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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,402	08/27/2003	Richard K. Hoofard	87269.4041	5337

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EXAMINER
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ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/648,402

Applicant(s)

HOOFARD ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-26 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-26 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5, 7, 9, 11-14, 20-22, 24 are rejected under 35 U.S.C. 102(a) as being

anticipated by Ashelin et al. discloses a dock leveler (14) comprising:

A lip keeper support system (90, 98), further comprising:

A lip holder comprising a multi-tiered lip holder means having at least two lip supporting positions. See Fig. 1; Col. 4, ln. 64-col. 5, ln. 15.

In regards to Claims 2, 3, 5, 21, 22 Ashelin et al. discloses the lip holder further comprises at least one body (90) defining at least one lip supporting position. Further wherein the at least one body is at least a 1<sup>st</sup> body (90) defining a 1<sup>st</sup> lip supporting position and a second body (98) defining a 2<sup>nd</sup> lip supporting position.

Ashelin et al. also discloses the at least one lip supporting position defined by body (90) defines a lip retaining portion, defined by a raised area and a recessed area and that the raised area is the lip retaining portion. See Fig. 1; Col. 4, ln. 64-col. 5, ln. 15.

In regards to Claim 9 Ashelin et al. discloses the at least two supporting positions are vertically and horizontally displaced from one another.

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In regards to Claims 11-13 Ashelin discloses a dock leveler, comprising:

A ramp (16).

A lip (18) pivotally attached to the ramp.

A lip holder (92, 98) comprising at least two lip supporting positions.

Wherein each lip supporting positions is configured to engage the lip.

See Figs. 1, 9. Further wherein the lip (18) is configured to pivot from a raised position to a pendant position through various lowered positions and the at least two lip supporting positions includes a 1<sup>st</sup> lip supporting position configured to engage the lip in the pendant position, and a 2<sup>nd</sup> lip supporting position configured to engage the lip in a lowered position. Such that the 1<sup>st</sup> lip supporting position is configured to cooperate with the lip to support the ramp in a substantially dock level position, and the 2<sup>nd</sup> lip supporting position is configured to cooperate with the lip to support the ramp at a 1<sup>st</sup> below dock level position. See Figs. 1, 8.

In regards to Claim 14 although Ashelin et al. does not explicitly recite the dock leveler as being upwardly-biased; Ashelin et al. does explicitly recite the dock leveler is mechanically-operated via actuators (32, 48) that both raise and lower the ramp and lip members (16, 18). Hence, it is inherent that the dock leveler can be either upwardly, downwardly or neutrally biased, depending upon the type of mechanical operation utilized. See Col. 2, In. 65-Col. 3, In. 25.

In regards to Claims 24, 25 Ashelin et al. discloses a method of supporting a dock leveler having a lip pivotally mounted to a ramp comprising:

Securing a 1<sup>st</sup> lip engagement apparatus (90) below the ramp in a location wherein the 1<sup>st</sup> lip engagement apparatus engages the lip when the lip is in a pendant position and the ramp is in a substantially dock level position.

Securing a 2<sup>nd</sup> lip engagement apparatus (98) below the ramp at a location wherein the 2<sup>nd</sup> lip engagement apparatus engages the lip if the lip should miss the 1<sup>st</sup> lip engagement apparatus and continue to a below dock level position.

Wherein the below dock level position is about 2.5 inches below dock level.

2. Claims 1, 2, 4, 6, 8, 11, 20, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hahn # 4,920,598.

Hahn discloses a lip keeper support system of use with a dock leveler having a pivotal lip (20) comprising:

A lip holder (28) comprising at least one, multi-tiered body (28) having at least 2 positions capable of supporting the lip (20). See Figs. 2, 3.

Wherein each of said at least 2 lip supporting positions defines a lip retaining portion (N). Further wherein each of the at least 2 lip supporting positions has a profile in the form of an L-shaped profile or a V-shaped profile. See Figs. 1-3.

In regards to Claim 11, Hahn discloses a dock leveler (I), comprising:

A ramp 14).

A lip (20) pivotally attached to the ramp (14).

A lip holder (28) comprising at least 2 lip support positions wherein each of the at least 2 lip supporting positions is configured to engage the lip. See col. 3, ln. 5-col. 50.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ashelin et al. # 6,502,268.

Although Ashelin et al. discloses the 1<sup>st</sup> and 2<sup>nd</sup> lip engagement members (90, 98) are separate elements, it would be obvious to form the lip engagement apparatus as a single unit, in order to simplify construction. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide method of support a dock leveler of Ashelin et al., with the step of providing a single lip engagement body, comprising 1<sup>st</sup> and 2<sup>nd</sup> lip engagement positions, in order to simplify construction of the loading dock. See cols. 2-3.

4. Claims 15-19, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn # 4,920,598 in view of Springer et al. # 5,440,772

Hahn discloses a dock leveler (1) having a lip holder (28) for supporting a lip (20) of a dock leveler (1).

What Hahn does not disclose is the use of support legs. However, Springer et al. teaches it is desirable to provide both lip keepers (38) and support leg apparatus (40, 42) such that a dock leveler can be supported at a below dock level position. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the dock leveler of Hahn, with a support leg apparatus, as taught by Springer et al., in order to accommodate loading and unloading vehicles of different heights. See col. 9, ln. 30-col. 11, ln. 32.

In regards to Claim 16 although Hahn does not disclose the use of support legs; Springer et al. teaches it is desirable to provide both lip keepers (38) and support leg apparatus (40, 42) such that a dock leveler can be supported at a below dock level position, such that the support legs are biased toward a forward position and configured to retract when the ramp falls slower than a predetermined rate, and configured to maintain the forward position when the ramp falls at or greater than a predetermined rate. See col. 1, lns. 44-59.

In regard to Claims 17-19 although Hahn does not disclose the use of support legs; Springer et al. teaches support legs (40) are desirably provided to dock levelers having lip keepers (38) such that the support leg apparatus (40, 218) are configured to support the ramp at a plurality of below deck level positions, and the support legs are further configured to pivot be forwardly-biased and automatically-retracting, from a forward position to a retracted position through intermediate positions, wherein the support leg retracts toward the retracted position when the ramp falls slower than a predetermined rate, maintains the forward position when the ramp falls at or greater than a predetermined rate toward the 1<sup>st</sup> below dock level position, maintains an intermediate support position of the support leg has begun to retract toward the retracted position and then falls at or greater than a predetermined rate toward a 2<sup>nd</sup> below dock level position. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the dock leveler of Hahn, with a support leg apparatus, as taught by Springer et al. in order to prevent "stump out" or other undesirable lowering of the dock leveler. See Springer et al. Fig. 19; Col. 2, ln. 25-40; col. 10, ln. 1-col. 11, ln. 33; col. 15, ln. 37-col. 16, ln. 52.



***Response to Amendment***

5. Applicant's amendment filed 12/23/04 has been carefully considered, and has overcome all Claim and Drawing Objections. Applicant's canceling of Claim 10 has obviated all objections and rejections cited against it in the Last Office Action.

***Response to Arguments***

6. Applicant's arguments filed 12/23/04 have been fully considered but they are not persuasive.

Applicant argues against the 102(b) rejection of claims 1-3, 5, 7, 9, 11-14, 20-22 as being anticipated by Ashelin, et al., by stating "item 98, as shown in fig. 9 of Ashelin, is not a lip support, and is not capable of making a lip supporting position, but rather item 98 is a wedge installed above roller 64 and 66 is used to guide the lower edge of the lip 18 around the roller housing...See col. 5, Ins. 1-4...Thus the second body identified...98 as a lip supporting position is not a lip supporting position at all..."

However, the Examiner does not concur. As cited by the Applicant " item 98...is used to guide the lower edge of the lip 18 around the roller housing...See col. 5, Ins. 1-4". Hence the item 98 supports the lip (18) by guiding the lip (18) around the roller housing. Which meets the structural and functional requirements of claim 1 which explicitly recites "A lip keeper support system...comprising: a lip holder comprising at least two lip supporting positions".

Therefore, the argument is not persuasive and the rejection is maintained.

Applicant then repeats the same argument in favor of independent claims 11, 24, to which the Examiner repeats the above cited response, in kind.

Applicant then argues "Ashelin does not teach a method that includes, as recited by claim 24: 'securing a second lip engagement apparatus below the ramp at a location wherein the second lip engagement apparatus engages and supports the lip if the lip should miss the first lip engagement apparatus and continue to a below dock level position' at least for the reasons described above".

However, the Examiner does not concur.

Fig. 9 of Ashelin clearly illustrates the claimed method being performed.

Therefore, the arguments are not persuasive and the rejection is maintained.

Applicant then argues against the reference to Hahn '598 by stating "Hahn shows a lip keeper (28) that has one and only one support position identified in Figs. 2 and 5 and N...N is a cavity within feature 28 and N prime is an outer wall that cams the lip's lower edge slightly toward the notch inner wall whereby lip edge is retained in the notch as the lip moves downwardly...Hahn does not teach or suggest the combination claimed in claims 1, 2, 4, 6, 8, 11, 20, 23 and 24.

However, the Examiner does not concur.

It appears as though Applicant is relying on the embodiment illustrated in Figs. 9, 10, wherein support apparatus (28) is shown having only a single notch (N). Whereas Figs. 1-5 illustrate several embodiments of a single support apparatus (28), each having a pair of surfaces that could be used to receive and support the lip, the rear surface being below or lower than the front support surface, thereby being able to support the lip (20) in a plurality of vertically inclined positions.

Therefore, the argument is not persuasive and the rejection is maintained.

Applicant then argues against the rejection of claim 26 by stating "claim 26 is dependent form claim 24...Therefore, claim 26 is patentable at least by reason of its dependency upon claim 24".

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Further, Ashelin discloses the methods claimed, except for making the 1<sup>st</sup> and 2<sup>nd</sup> lip engagement members from a single unit, such that they can be secured in a simultaneous step. It would have been obvious to one having ordinary skill in the art, at the time the invention was made to form the lip support members (90, 98) as a single

unit, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Work*, 150 U.S. 164 (1893).

Therefore the argument is not persuasive and the rejection is maintained. Applicant then argues in favor of claims 15-19 by suggesting they depend from claim 11 and that claim 11 has been shown to be patentable over Hahn".

However, the Examiner does not concur.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

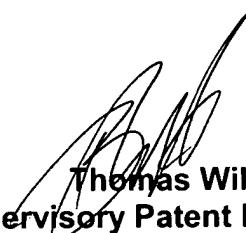
Therefore, the argument is not persuasive and the rejection is maintained.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 872-9326.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).  
On or about 3/30/05 Examiner Addie's telephone number will become (571) 272-6986.



Thomas Will  
Supervisory Patent Examiner  
Group 3600

RWA  
2/23/2005